No. 85-501

Supreme Court, U.S.
FILED
SEP 20 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

GRETCHEN C. GREENSPUN,
Petitioner,

-vs-

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

GREGORY C. McCARTHY
4214 Hulmeville Road
Bensalem, Pennsylvania 19020
(215) 245-7800

Appearing Pro Bono for Petitioner,
Gretchen C. Greenspun

THE SUPERIOR APPELLATE PRINTING COMPANY
P.O. Box 363 Area Code 609

QUESTIONS PRESENTED

1. WHETHER PETITIONER'S CONVICTION WAS OBTAINED IN VIOLATION OF HER SIXTH AMENDMENT RIGHT TO HAVE THE ASSISTANCE OF COUNSEL FOR HER DEFENSE DURING ALL THE CRITICAL STAGES OF THE CRIMINAL PROCEEDINGS?

2. DID THE TRIAL COURT ERR IN ITS ABSOLUTE REQUIREMENT OF A COMPLETE DISCLOSURE OF PETITIONER'S FINANCIAL POSITION, WHEN SUCH DISCLOSURE WOULD HAVE REQUIRED A WAIVER OF PETITIONER'S FIFTH AMENDMENT RIGHTS?

PARTIES

There are no other parties to this proceeding other than those identified in the caption of the Petition.

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   Dated: December 22, 1983

   C.A. No. 83-3625

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   United States of America

   v.

   Gretchen C. Greenspun

   Criminal No. 83-00406-1

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   Dated: May 13, 1985

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For The Third Circuit

Dated: July 3, 1985

United States of America

v.

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For the Third Circuit

Dated: July 22, 1985

United States of America

v.

Gretchen C. Greenspun

C.A. Nos. 84-1435, 84-1439

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JURISDICTIONAL STATEMENT

This criminal conviction was affirmed by the United States Court of Appeals For The Third Circuit on July 3, 1985. The Petition For Rehearing by the Court In Banc was denied on July 22, 1985, making this Petition For a Writ of Certiorari timely when filed within sixty (60) days of that date.

The jurisdiction of this Court is invoked under *Title 28 U.S.C. § 1254(1).*

CONSTITUTIONAL PROVISIONS INVOKED IN THIS PETITION

1. FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

2. SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense.

FEDERAL RULES AND STATUTES CONTAINED IN THIS PETITION

1. FEDERAL RULES OF CRIMINAL PROCEDURE

Rule 10. Arraignment

Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to him the substance of the charge and calling on him to plead thereto. He shall be given a copy of the indictment or information before he is called upon to plead.

Rule 44(a) Right to Assigned Counsel

Every defendant who is unable to obtain counsel shall be entitled to have counsel assigned to represent him at every stage of the proceedings from his initial appearance before the federal magistrate or the court through appeal, unless he waives such appointment.

2. **Title 18 U.S.C. § 3006A. Adequate representation of defendants**

(a) **Choice of plan.** - Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for any person financially unable to obtain adequate representation (1) who is charged with a felony or misdemeanor (other than a petty offense as defined in section 1 of this title) or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor or with a violation of probation, (2) who is under arrest, when such representation is required by law, (3) who is subject to revocation of parole, in custody as a material witness, or seeking collateral relief, as provided in subsection (g)(4) whose mental condition is the subject of a hearing pursuant to chapter 313 of this title, or (5) for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he faces loss of liberty, any Federal law requires the appointment of counsel. Representation under each plan shall include counsel and investigative, expert, and other service necessary for an adequate defense. Each plan shall include a provision for private attorneys. The plan may include, in addition to a provision for private attorneys in a substantial proportion of cases, either of the following or both:

(1) attorneys furnished by a bar association or a legal aid agency; or

(2) attorneys furnished by a defender organization established in accordance with the provisions of subsection (h). Prior to approving the plan for a district, the judicial council

of the circuit shall supplement the plan with provisions for representation on appeal. The district court may modify the plan at any time with the approval of the judicial council of the circuit. It shall modify the plan when directed by the judicial council of the circuit. The district court shall notify the Administrative Office of the United States Courts of any modification of its plan.

(b) **Appointment of counsel.** - Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan. In every criminal case in which the defendant is charged with a felony or a misdemeanor (other than a petty offense as defined in section 1 of this title) or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor or with a violation of probation and appears without counsel, the United States magistrate or the court shall advise the defendant that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the defendant waives representation by counsel, the United States magistrate or the court, if satisfied after appropriate inquiry that the defendant is financially unable to obtain counsel, shall appoint counsel to represent him. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The United States magistrate or the court shall appoint separate counsel for defendants having interests that cannot properly be represented by the same counsel, or when other good cause is shown.

(c) **Duration and substitution of appointments.** - A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the United States magistrate or the court through appeal, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel the United States magistrate or the court finds that the person

is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in subsection (f), as the interests of justice may dictate. If, at any stage of the proceedings, including an appeal, the United States magistrate or the court finds that the person is financially unable to pay counsel whom he had retained, it may appoint counsel as provided in subsection (b) and authorize payment as provided in subsection (d), as the interests of justice may dictate. The United States magistrate or the court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

3. **Title 28 U.S.C. § 1915. Proceedings in forma pauperis**

(a) Any court of the United States may authorize the commencement, prosecution of defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b) Upon the filing of an affidavit in accordance with subsection (a) of this section, the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(b) The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.

STATEMENT OF THE CASE

On December 12, 1983, an information was filed by the United States Attorney for the Eastern Judicial District of Pennsylvania, Number 83-00406-1, charging Petitioner, Gretchen Greenspun, with two (2) counts of violation of *Title 26 U.S.C. §7203,* for the calendar years 1980 and 1981.

The United States District Court for the Eastern Judicial District of Pennsylvania had jurisdiction in this matter pursuant to *Title 18 U.S.C. §3231.*

Arraignment was initially scheduled for December 22, 1983; however, it was continued to December 29, 1983.

At each appearance, Petitioner was not assisted by counsel.

On December 19, 1983, Petitioner filed her first Affidavit of Impecuniosity following the guidelines of *28 U.S.C. §1915.*

Prior to the first appearance before the assigned trial judge, the Honorable Raymond J. Broderick, Petitioner filed various interlocutory appeals, without the assistance of counsel, which were ultimately disposed of by the Court of Appeals for the Third Circuit. These actions are not the subject for review in this Petition, except that on December 22, 1983, the Court of Appeals granted In Forma Pauperis status, by Order of Court. (Appendix A).

On February 9, 1984, before the Honorable Raymond J. Broderick, Petitioner renewed her request for a declaration of In Forma Pauperis status, a request which was denied.

The Court, on February 9, 1984, set the trial date for February 14, 1984, a scant five days later. In denying Petitioner's request for a declaration of In Forma Pauperis status, the Court stated that her motion filed December 19, 1983, was not sufficient.

Petitioner did appear on this date (February 9, 1984) with a person, who is not an attorney, who had assisted her in preparing for the hearing. Petitioner was required by the Trial Judge to either complete another affidavit, to the Court's satisfaction,

or be questioned under oath concerning her financial resources. Petitioner refused to provide the information on her financial resources, relying on her previously filed Affidavit of Impecuniosity.

No instruction was presented by the Trial Judge that the financial information, which may have been disclosed, could not be used in the prosecution of the criminal case. There was no offer by the Trial Judge to have an *in camera* review of financial resources. The Court recessed at 4:30 o'clock P.M.

On February 14, 1984, Petitioner again appeared before the Honorable Raymond J. Broderick, as required by Order of the Court, *for the commencement of the trial.* Still, Petitioner was without counsel. The Court, fully aware of the absence of counsel, scheduled the trial, for which the prosecution was prepared.

Again, the Trial Court renewed its requirement that Petitioner provide an appropriate affidavit on its prescribed form. Petitioner informed the Court that she would not waive her Constitutional Rights. This comment by Petitioner was occasioned by the presence in the courtroom of not only the prosecuting attorney, but the investigating agent who was scheduled to be a witness in the trial, and other agents who had assisted in the investigation. Petitioner, at one point, informed the Court that she will not waive her right to counsel.

The Trial Court, on a number of occasions, repeated its demand that Petitioner fill out the required form.

In fact, on February 14, 1984, the prosecuting attorney suggested an option to the Court of appointing counsel, with a condition of a future obligation of filing another affidavit, or compelling her to pay the costs of her defense.

The next appearance before the Honorable Raymond J. Broderick was on March 13, 1984. At this point, over Petitioner's objections, the Court proceeded to read the charges to the Petitioner and explain the elements of the crime, that government must prove beyond a reasonable doubt, including

willfullness. Petitioner objected because the reading of the charges should have occurred at arraignment pursuant to *Rule 10,* Federal Rules of Criminal procedure. Subsequently, the Court advised the Petitioner in its February 29, 1984 memorandum that any information provided by Petitioner to determine in forma pauperis status will not be used against her in the trial. The memorandum further acknowledges that Petitioner has not waived counsel, nor expressly elected to proceed *pro se.*

(Relevant portions of memorandum of February 29, 1984):

> It has been suggested [by government] that the Court accept the defendant's conclusory 'affidavit of impecuniosity,' appoint counsel immediately, and at some later time require the defendant to either make the required financial disclosures or pay the costs of appointed counsel. *This Court rejects that suggestion.* This Court will conduct the financial inquiry set forth in *18 U.S.C. section 3006A(b).* It is the taxpayers who shoulder the financial burden of providing counsel pursuant to the *Criminal Justice Act,* and although this Court always has and will resolve all doubts *in the defendant's favor,* it will not appoint counsel unless and until a defendant complies with the required procedure.
>
> Although the defendant's refusal to be sworn appears to this Court to have been based upon her insistence that her affidavit of impecuniosity was adequate and sufficient, the transcript of the February 9th hearing does contain a statement ...that 'I am not here to make admissions or confessions.' In the event the defendant is concerned that any statement she might make under oath in connection with the appointment of counsel might later be used against her in this trial, the defendant is herewith advised that the government will not be permitted to use as part

> of its direct case any truthful testimony given by her whether orally or by affidavit in connection with her application for court-appointed counsel...
>
> If the defendant does not provide the required information, counsel will not be appointed. If counsel is not appointed and the defendant does not employ counsel, she will proceed to trial *pro se*, notwithstanding *her refusal to waive counsel* or expressly elect to proceed *pro se*. Requiring a defendant to proceed *pro se* in such circumstances does not violate the Sixth Amendment right to counsel...

Trial commenced on May 1, 1984, with Petitioner appearing *without assistance of counsel.* Consequently, Petitioner was not able to present a defense at trial.

On May 3, 1984, Petitioner was found guilty of both charges listed in the information.

On June 13, 1984, Petitioner filed an affidavit to satisfy the Court's requirement for financial information. These documents were filed for the purpose of representing to the Court her inability to secure counsel, and to restate her request for appointed counsel.

At sentencing on July 10, 1984, the sentencing judge, the Honorable Raymond J. Broderick, stated that the statements made by Petitioner in her affidavit of June 13, 1984 are an indication of the fact that *she actually was financially unable* to obtain her own counsel.

Upon the filing of her appeal as of right with the Court of Appeals for the Third Circuit, Petitioner was denied a request for a waiver of docketing fees and costs of the trial transcripts. Petitioner was also denied the appointment of counsel to argue the appeal, all of this in spite of the fact that the Court of Appeals had previously granted in forma pauperis status on December 22, 1983. (Appendix A).

The facts are clear, that from the time of the filing of the information, through trial and sentencing, indeed, at every critical stage of this criminal proceeding, including the appeal to the Third Circuit Court of Appeals, Petitioner was denied the assistance of counsel.

REASONS FOR GRANTING THE WRIT

1. SUPERVISION OF THE SUPREME COURT IS REQUIRED TO ENSURE THAT THE SIXTH AMENDMENT RIGHT TO COUNSEL IS PRESERVED.

The factual pattern in this instant case is *not* reflective of ineffective assistance of counsel, but rather, the *lack* of assistance of counsel.

On December 29, 1983, Petitioner appeared before United States Magistrate Peter B. Scuderi for arraignment, pursuant to *Rule 10,* Federal Rules of Criminal Procedure. Arraignment is a critical stage where defenses and motions must be made or be lost to the defendant.

Mr. Justice Douglas, delivering the unanimous opinion of the Court stated:

> What happens there may affect the whole trial...Only the presence of counsel could have enabled this accused to know all the defenses available to him and to plead accordingly. *Hamilton v. Alabama, 368 U.S. 53-55, (1961).*

On May 1, 1984, Petitioner appeared before the Honorable Raymond J. Broderick, Judge, United States District Court for the Eastern District of Pennsylvania, for trial.

During the trial, Petitioner was not assisted by counsel, certainly a critical stage. At no time was there a waiver by Petitioner of her right to counsel, a fact which is reflected in the trial court's Memorandum of February 29, 1984 at page 15. Additionally, the record in this instant case clearly indicates the *lack* of a waiver.

A waiver, to be valid, must be "an intentional relinquishment or abandonment of a known right or privilege." *Johnson v. Zerbst, 304 U.S. 458, 464 (1938); Faretta v. California, 422 U.S. 806, 835 (1975).*

Mr. Justice Black, delivering the opinion of the Court in *Johnson v. Zerbst, supra,* stated:

> The Sixth Amendment guarantees that 'in all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defense.' This is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty...It embodies a realistic recognition of the obvious truth that the average defendant does not have the professional legal skill to protect himself when brought before a tribunal with the power to take his life or liberty, wherein the prosecution is presented by experienced and learned counsel.
> *304 U.S. at 462-63.*

The trial court herein attempted to have Petitioner complete an "appropriate affidavit" or submit herself, under oath, to an inquiry, detailing her financial position. Petitioner, faced with a prosecution involving her personal finances, and without the assistance of counsel, attempted to present to the trial court an affidavit in conformity with *Title 28 U.S.C. sec. 1915.*

Petitioner, aware of the possibility of a waiver of her Fifth Amendment right against self-incrimination, was not sure of the proper course of action. Indeed, the United States of America, by Edward S.G. Dennis, Jr., United States Attorney, and Edward F. Borden, Jr., Assistant United States Attorney, urged the trial court to have an *in camera* inspection of Petitioner (Appendix B). The trial court refused this request.[1]

The trial court, faced with the dilemma of an individual who was unassisted by counsel and who was attempting to protect

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[1] Excerpt of N.T. of March 13, 1984 hearing.

MR. BORDEN: I was going to say first of all, if it would induce Mrs. Greenspun to provide the information, I would be happy to leave the courtroom with the agent so that can be done in-camera, and I put that on the record should she wish to change her mind.

her Constitutional rights, did not review the affidavit accompanying her petition for In Forma Pauperis status, with a view towards protecting those rights. Rather, the trial court set the absolute pro forma standard of requiring Petitioner to complete form CJA 23, this, in spite of the efforts of the prosecuting attorney to convince the trial court to appoint an attorney, and if it was subsequently determined that Petitioner could afford counsel, the costs of appointed counsel could have then been assessed against Petitioner. This recommended course of action is certainly in conformity with *Title 28 U.S.C. §1915(d); Title 18 U.S.C. §3006A(b)* and *(c);* and *Rule 44*, Federal Rules of Criminal Procedure.

Finally, at the critical stage of sentencing on July 10, 1984, Petitioner was not represented by counsel. Mr. Justice Douglas, delivering the opinion of the Court in *Argersinger v. Hamlin, 407 U.S. 25* at *37, (1972)*, stated:

> We hold, therefore, that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor or felony, unless he was represented by counsel at his trial.

Petitioner was, in fact found guilty on May 3, 1984, and subsequently sentenced to six months incarceration on count 1 of the information. Although the sentence was stayed pending appeal, the trial court ignored the *Argersinger* rule, and its progeny.

Petitioner was also denied the assistance of counsel on her first appeal as of right. (see Appendix C). In a case directly on point on the issue of assistance of counsel on appeal, Mr. Justice Brennan wrote for the Court:

> The Due Process Clause...guarantees a criminal appellant the effective assistance of counsel on a first appeal as of right. *Evitts v. Lucey, 469 U.S. ___, 83 L.Ed2d 821* (January 21, 1985), and cases cited therein.

2. SUPERVISION OF THIS COURT IS NECESSARY TO RESOLVE THE CONSTITUTIONAL ISSUE PRESENT WHEN PETITIONER IS CHARGED WITH A CRIMINAL VIOLATION OF THE INTERNAL REVENUE CODE AND, AT THE SAME TIME, IS FORCED TO PRESENT FINANCIAL DATA TO ESTABLISH INABILITY TO AFFORD COUNSEL FOR HER DEFENSE.

Petitioner, once faced with prosecution following the filing of an information on December 12, 1983, presented the required affidavit to the trial court on December 19, 1983, in accordance with *Title 28 U.S.C. sec. 1915.*

The trial court did not affirmatively state to the Petitioner that any information presented by affidavit or colloquy would *not* be used in the prosecution's case-in-chief (or in future tax prosecutions, if any) until the hearing on March 13, 1984.[2]

During this interim period, Petitioner, without counsel, recognized her rights under the Fifth Amendment.

Petitioner, unable to determine established precedent in the trial court, would direct this Court's attention to *Kitchens v. Smith, 401 U.S. 847,* where, in a Per Curiam decision, this Court noted that counsel need not be requested where a Constitutional right exists to such assistance of counsel.

The facts herein are clear. Petitioner never waived her right to counsel and, indeed, requested the trial court to appoint counsel.

The prosecuting attorney presented to the trial court the alternatives endorsed in *United States v. Anderson, 567 F.2d 839 (8th Cir., 1977),* wherein the defendant was afforded the

---

[2] Excerpt of March 13, 1984 hearing:

THE COURT: Let me comment. It wouldn't make any difference whether it is done in-camera or before you (A.U.S.A. Borden). I won't permit you to use it. That's what I have advised her of.

opportunity to make an *in camera* disclosure of financial information to the trial court for review, after which it would be sealed and not made available for the purpose of the tax prosecution. In *Anderson*, the defendant was even afforded the assistance of counsel for the purpose of reviewing and completing the required affidavit. The Court of Appeals stated in *Anderson* at page 840,

> After review by the trial court, the financial data should be sealed and not made available for the purpose of tax prosecution.

Furthermore, the Court, in *United States v. Moore, 671 F.2d 140 (5th Cir. 1982)* stated:

> We hold that the absolute requirement of the district court that CJA form 23 be filled out before the court will consider the appointment of counsel, is in violation of the rights of the accused under the United States Constitution, Sixth Amendment, and the Criminal Justice Act, 18 U.S.C. §3006A(b).

The Court, in *Moore* further pointed out that:

> Appointment of counsel could not always be conditioned on an absolute requirement that the defendant respond to questions about his financial status.

CONCLUSION

This Writ should be granted because the denial of the assistance of counsel to a criminal defendant, regardless of the type of case or controversary, is an issue of national importance and should be determined in conformity with this Court's controlling opinions, the applicable statutes and rules, and the United States Constitution.

s/Gregory C. McCarthy
Gregory C. McCarthy
Appearing Pro Bono for
Petitioner, Gretchen Greenspun
4214 Hulmeville Road
Bensalem, PA 19020
(215) 245-7800

APPENDIX

APPENDIX A

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA 19106

December 22, 1983 EXHIBIT B

Ms. Gretchen Greenspun
718 Crum Creek Road
Broomall, PA 19008

RE: GRETCHEN GREENSPUN
Petitioner

v.

EDWIN E. NAYTHONS, MAGISTRATE
U.S. DISTRICT COURT
Eastern District of PA
Respondent

and

CLARENCE C. NEWCOMER, JUDGE
U.S. DISTRICT COURT
Eastern District of PA
Respondent

No. 83-3625

Dear Ms. Greenspun:

Enclosed herewith is conformed copy of order entered by the Court today in the above-entitled case granting your motion for in forma pauperis and denying your petition for writ of prohibition.

The above case was docketed under the General Docket today at No. 83-3625.

Very truly yours,
SALLY MRVOS, Clerk

s/S.M.

by:

Deputy Clerk
DIRECT DIAL
597-3009

mmd
Enc.

cc: Honorable Clarence C. Newcomer
United States District Judge
13614 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Honorable Edwin E. Naythons
United States Magistrate
4617 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

December 21, 1983 BPS-98

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 83-3625

GRETCHEN GREENSPUN,
Petitioner

vs.

EDWIN NAYTHONS, MAGISTRATE, U.S. District Court, Eastern District of PA,
Respondent

and

CLARENCE C. NEWCOMER, Judge, U.S. District Court, Eastern District of PA

Present: ADAMS, HIGGINBOTHAM and SLOVITER, **CIRCUIT JUDGES**

Submitted are petitioner's:

(1) Motion for **in forma pauperis**; and

(2) Petition for Writ of Prohibition in the above-captioned case.

Respectfully,

s/S.M. (SVY)

Clerk

SM/SVY/sb
enc.

The foregoing Motion is/are

Motion for in forma pauperis is granted.
Petition for Writ of Prohibition is denied.

By the Court

s/A.

Judge

Dated: December 22, 1983

INFORMATION STATEMENT TO BE COMPLETED BY DISTRICT COURT OR TAX COURT CLERK'S OFFICE

United States of America D.C. or Tax Court

vs. Docket No. CR. 83-00406

Gretchen Greenspun

EXHIBIT A

NOTICE OF APPEAL FILED 12/27/83 CT. REP _____
(Date) (Name)

Filing Fee: No Fee:

Notice of Appeal _____Paid __X__Not Paid
Docket Fee _____Paid __X__Not Paid __ Seaman

CJA Appointment: [Attach Copy of Order]

_____Private Attorney _____Defender Association or Federal Public Defender

_____Motion Pending

Leave to proceed in forma pauperis status, if applicable: [Attach Copy of Order]

_____Motion pending before __X__Motion granted District Judge

____Will apply for in forma pauperis ____Motion denied

Certificate of Probable Cause (habeas corpus): [Attach Copy of Order]

_____Granted _____Denied _____Pending

Bail Status: _____ Defendant's Address: (for criminal appeals)

_____

PREPARED BY: _____ DATE: 12/30/83
(Signature of D.C. or Tax Court Deputy Clerk)

PLEASE APPEND TO THE NOTICE OF APPEAL AND FORWARD TO THE OFFICE OF THE CLERK, U.S. COURT OF APPEALS

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v. CRIMINAL NO. 83-406

GRETCHEN C. GREENSPUN

GOVERNMENT'S MEMORANDUM REGARDING APPOINTMENT OF COUNSEL

Defendant Greenspun has demanded that the court appoint counsel to represent her in this prosecution and has refused to supply the court, either by affidavit or colloquy, with the information necessary to make the determination whether she qualifies for the appointment of counsel under the Criminal Justice Act. This intransigence presents the court with the difficult issue which resulted in reversal of a conviction in *United States v. Moore, 671 F.2d 139 (5th Cir. 1982)* and a remand in *United States v. Anderson, 567 F. 2d 839 (8th Cir. 1977)*: May the defendant be forced to disclose financial information in support of her request for counsel if the information is of such a type as might conceivably be used against her in the trial of the subject case?

The government suggests that the court employ the alternative endorsed by the court in *Anderson.* The defendant should be afforded the opportunity to make an *in camera* submission of a satisfactory affidavit or to undergo questioning, under oath, *in camera,* by the court on the subject of her financial condition. The court should notify the defendant in advance that the affidavit or transcript of the hearing will be sealed under order of the court and not made available to the government until the completion of trial.

Should the defendant, as seems likely, refuse to provide the necessary information, the court may then compel her to answer, see *Murphy v. Waterfront Commission, 378 U.S. 52, 79-80 (1964),* or simply proceed to trial with the defendant

acting *pro se, United States v. Ellsworth, 547 F.2d 1096, 1097-98 (9th Cir.), cert. denied, 431 U.S. 931 (1977).* If the court adopts this second alternative, it should again review with the defendant *in camera,* the technical problems and the risks of self representation and urge her strongly to retain counsel. *United States v. Welty, 674 F.2d 185, 188 (3d Cir. 1982).* If she thereafter fails to retain counsel, her actions should be viewed as a knowing and intelligent waiver. *United States v. Weniger, 624 F.2d 163, 167 (10th Cir.), cert. denied, 449 U.S. 1012 (1980).* Detailed findings should be made in this regard. *Edwards v. Arizona, 451 U.S. 477, 482 (1981); Faretta v. California, 422 U.S. 806, 835 (1975).*

Respectfully submitted,

s/W.S.G.D., Jr.

EDWARD S.G. DENNIS, JR.
United States Attorney

s/E.F.B., Jr.

EDWARD F. BORDEN, JR.
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Government's Memorandum Regarding Appointment of Counsel, by placing same in the United States Mail, postage prepaid, upon:

Gretchen C. Greenspun
718 Crum Creek Road
Broomall, Pa. 19008

s/E.F.B., Jr.

EDWARD F. BORDEN, JR.
Assistant United States Attorney

DATE: February 14, 1984

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
Nos. 84-1435 and 84-1439 May 1, 1985

UNITED STATES OF AMERICA

vs.

GREENSPUN, GRETCHEN, G.,
Appellant

(E.D.Pa. Crim. 83-00406)

Present: HIGGINBOTHAM and BECKER, **Circuit Judges,** and COHILL, **District Judge.**

1. Appellant's motion for this Court to appoint counsel to argue her appeal
and
for an additional ninety (90) days in order that appointed counsel have sufficient time to become familiar with the appeal issues, **with** Brief in support of motion,

in the above-entitled cases listed for disposition on the merits on Tuesday, June 11, 1985.

Respectfully,

s/D.T.
Deputy Clerk 7-1092

enc.
dt

The foregoing Motion /are denied

By the Court,

s/A.L.H.
Judge

Dated: May 13, 1985 dt/cc: Ms. GG
MAMcC

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 84-1435 and 84-1439

UNITED STATES OF AMERICA

v.

GREENSPUN, GRETCHEN, C.,
Appellant

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Crim. No. 83-00406-01)
District Judge: Honorable Raymond J. Broderick

Submitted **Pro Se** Under Third Circuit Rule 12(6)
Tuesday, June 11, 1985

Before: HIGGINBOTHAM and BECKER, **Circuit Judges**
and COHILL, **District Judge***

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*Honorable Maurice B. Cohill, Jr., United States District Court for the Western District of Pennsylvania, sitting by designation.

JUDGMENT ORDER

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted *pro se* under Third Circuit Rule (12)6 on Tuesday, June 11, 1985.

After considering the contentions raised by defendant-

appellant, Gretchen Greenspun, to-wit, that the district court erred: (1) in denying her application for appointment of counsel unless she first waived her Fifth Amendment right against self-incrimination, because her attestation of indigency was not disputed and the government affirmatively advised the district court that its actions in this regard were improper; (2) in finding that appellant was able to represent herself at trial when there was overwhelming evidence to the contrary and no evidence to support such a finding; (3) in disallowing appellant a reasonable opportunity to present evidence to support the defense she sought to establish, particularly in light of her *pro se* appearance; (4) by placing emphasis on the legal errors in appellant's belief that she was under no legal duty to file federal income tax returns with financial information, without placing at least equal emphasis in instructing the jury on the exculpatory consequences of appellant's good faith belief in her legal theories; (5) in considering the 71 day delay in bringing appellant to trial as "excludable time", when the majority of the delay was actually attributable to the trial court; (6) in limiting defendant's evidence regarding her good faith beliefs; (7) in concluding that defendant waived her right to counsel and agreed to appear pro se; (8) in imposing probation conditions that were violative of defendant's rights; and (9) in its charge to the jury on whether the 1040A forms filed for 1980 and 1981 are not tax returns and do not fulfill statutory requirements.

It is ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

BY THE COURT,

s/A.L.H.
Circuit Judge

Attest:

s/S.M.
Sally Mrvos, Clerk

DATED: July 3, 1985

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 84-1435 and 84-1439

UNITED STATES OF AMERICA

v.

GREENSPUN, GRETCHEN, C.,
Appellant

SUR PETITION FOR REHEARING

Before: ALDISERT, **Chief Judge,** SEITZ, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, BECKER, STAPLETON, MANSMANN, **Circuit Judges,** and COHILL, **District Judge***

The petition for rehearing filed by Gretchen C. Greenspun, appellant in the above-entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT,

s/A.L.H.
Circuit Judge

Dated: July 22, 1985

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*Honorable Maurice B. Cohill, Jr., United States District Court for the Western District of Pennsylvania, sitting by designation.

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA 19106

July 22, 1985

Re: United States of America vs. Greenspun, Gretchen C., Appellant

Nos. 84-1435 and 84-1439

Dear Counsel and Ms. Greenspun:

Enclosed herewith is a conformed copy of order filed today in the above-entitled case.

Very truly yours,

Sally Mrvos, Clerk

By: s/B.J.R.

Betty J. Robinson,
Deputy Clerk
DIRECT DIAL - 597-3134

ml

Enc.

cc: all parties

P.S. to Ms. Greenspun: Your motion for stay of mandate has been forwarded to the Court and you will be advised when an order is entered.